

S. DELOS CHAMPAIGN

IBLA 78-568

Decided November 6, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, holding oil and gas lease W 54488 to have terminated.

Affirmed as modified.

1. Accounts: Payments—Oil and Gas Leases: Rentals—Oil and Gas Leases:
Termination—Payments: Generally

A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law and not by the action of any official if the annual rental is not paid on or before the due date. Submission of a rental check without identifying the lease number precluded the Bureau of Land Management from accepting the check as payment for the lease, and a lease is properly held to terminate in the absence of a timely identified payment of the rental.

2. Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Termination

An oil and gas lease terminated by operation of law for failure to pay rental timely may be reinstated only where, among other things, it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. Mailing a properly identified rental check after the due date does not constitute reasonable diligence, nor is there justification for the late payment because an unidentified check was received by BLM prior to the due date but returned for identification of the account to be credited.

APPEARANCES: S. Delos Champaign, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

S. Delos Champaign has appealed from a decision of the Wyoming State Office, Bureau of Land Management, holding oil and gas lease W 54488 to have terminated by operation of law for failure to pay the annual lease rental on or before July 3, 1978, pursuant to 30 U.S.C. § 188(b) (1976) and 43 CFR 3108.2-1(a). 1/

We note that the decision below ruled only that the lease had terminated. The decision advised appellant of his right to appeal, but failed to indicate that a lessee may petition the State Office for reinstatement of a lease terminated for failure to pay the rental timely. See 43 CFR 3108.2-1(c). Because of this failure by the State Office, we will not regard the lack of a petition for reinstatement to preclude consideration of this issue. Appellant's statement of reasons sets forth the circumstances causing the delay in payment and it was filed timely. Therefore to avoid unnecessary and duplicative administrative handling, we will treat appellant's Statement of Reasons as a petition and adjudicate the matter in this appeal rather than needlessly delay final resolution of the matter by remanding the case.

Appellant had mailed a check dated June 21, 1978, to the State Office, and the State Office returned the check to appellant with a notice dated June 28 because appellant had failed to identify the purpose of the payment. The check was resubmitted on July 7, 1978, arriving in an envelope postmarked July 5.

Appellant states that he had not been apprised of the necessity for identification of the check and feels that his unusual name should have made it easier to determine that the check was in payment for the lease rental. He further states that he has lost the secretary who had mailed the checks for previous rentals and who had presumably identified the lease on those checks.

[1] A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law and not by the action of any official if the annual rental is not paid on or before the due date. 30 U.S.C. § 188(b) (1976). Although appellant's check without the lease number was received before the

1/ July 1, 1978, the anniversary date, fell on a Saturday, so the rental payment was due on Monday, July 3. The decision below incorrectly stated that payment was required on July 1, 1978. The lessees of record were S. Delos Champaign and Robert E. Skinner.

anniversary date, his failure to indicate the purpose of the check precluded the Bureau from accepting it as rental for the lease. It is the responsibility of the lessee to see that any check tendered for annual rental is so identified that the appropriate State Office can credit the payment to the proper lease account. *Pacific Transmission Supply Co.*, 35 IBLA 297 (1978). The lease was properly held to terminate upon appellant's failure to make a timely identified payment of the rental.

[2] We must next consider whether the lease may be reinstated. Pursuant to 30 U.S.C. § 188(c) (1976), a terminated oil and gas lease may be reinstated where, among other things, it is shown that such failure was either justifiable or not due to a lack of reasonable diligence. Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2). Appellant did not exercise reasonable diligence because the check with proper identification was not sent prior to the due date. See *Pacific Transmission Supply Co.*, *supra*. Nor do we see any justification for the late payment which resulted from the failure to identify the purpose of the payment when the check was first submitted. The fact that appellant had lost his secretary who had made the payments properly in the past provides no greater justification than if the secretary herself had not made the proper payment. See generally, *Lone Star Producing Co.*, 28 IBLA 132 (1976), and cases cited therein.

Although we recognize that there is no regulation which expressly requires that payments be identified, the need for identification on the check should be self-evident. Where the purpose of a check is not identified, the Bureau has neither the duty nor the authority to assume the purpose for the check or credit it to a particular account. The responsibility for properly identifying the account to be credited is with the lessee. *Howard Arndt*, A-27895 (April 20, 1959); cf. *D. Miller*, 65 I.D. 281 (1958).

We must recognize that the monthly volume of rental checks makes prior identification a practical necessity. ^{2/} To hold that an unidentified check constitutes payment would place the Bureau in the position of having to make decisions that can only be made by the lessee. For example, in *Pacific Transmission Supply Co.*, *supra*, the lessee submitted a check which indicated that it was payment for only one lease, but it was \$240 in excess of the required rental. The lessee had actually intended the excess to cover the rental for a second

^{2/} The Wyoming State Office of the Bureau of Land Management maintains many thousands of active accounts for oil and gas leases in Wyoming, Nebraska, and Kansas.

lease, but until the lessee had identified the purpose of the payment, the Bureau had no basis or authority to conclude that the excess was to be credited to the second lease. We recognize that there may be situations in which the lessee may want to let the lease terminate. For example, consider the situation in which rentals for several leases are due but the lessee wishes to retain only one lease. If the payment for the single lease is not identified, the Bureau has no way to conclude which lease is the one to be credited. If identification may be made at any time, a lessee in our hypothetical example might try to maintain his tenure of all of the leases by not promptly identifying the particular lease for which the payment is to be credited. Such a result would clearly be contrary to the statutory automatic termination provision, yet such a result would necessarily follow if lessees were allowed to identify the purpose of their payments at any time after the payments were due. The Department has not considered a payment to have been made until the proper account has been identified. Howard Arndt, supra. We adhere to that view.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed with the additional reasons given in this decision to deny reinstatement.

Joan B. Thompson
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

